of the plaintiff's claim turns on an analysis of "[t]he structure of Title VII, the congressional policy underlying it, and the reasoning of [this Court's] cases." See *Zipes*, 455 U.S. at 393. These considerations "all lead to this conclusion" (*ibid.*): Section 701(b)'s 15-employee requirement is jurisdictional.

Section 703(a) of Title VII, entitled "Employer practices," provides in relevant part:

> It shall be an unlawful employment practice for an employer—
>
> (1) to fail to refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.

42 U.S.C. § 2000e-2(a). Section 701(b) of Title VII in turn provides that "[t]he term 'employer' means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year." *Id.* § 2000e(b). Finally, § 706(f)(3) of the Act states in relevant part that "[e]ach United States district court . . . shall have jurisdiction of actions brought under this title." *Id.* § 2000e-5(f)(3).

The placement of the term "employer" in the preamble to § 703—apart from the description of acts that trigger liability—confirms that it is a threshold issue and distinct from merits questions involving the defendant's *conduct toward the plaintiff*. The determination whether the defendant is an "employer" *precedes* any inquiry into whether the defendant "discriminate[d]" against the plaintiff. That is, before the court delves into merits issues such as whether the plaintiff was subjected to "discrimination," whether the discrimination concerned

"compensation, terms, conditions, or privileges of employment," or whether the defendant discriminated against the plaintiff "because of" her sex (or some other prohibited reason), it must first determine that the defendant is among the *class of entities* to whom the statute applies. As this Court has elsewhere explained: when Congress "expressly exempted . . . small businesses" from Title VII, it granted them "*complete* immunity" from Title VII. *Hishon*, 467 U.S. at 78 & n.11 (emphasis added). This immunity for small employers—including many, if not most, municipal and county agencies—entails relief not only from liability, but also from having to defend themselves on the merits.

A. This Court's Section 1983 Decisions Confirm that in the Context of Federal Civil Rights Legislation, Limitations on the Class of Entities Subject to Liability Are Jurisdictional.

This Court's decisions concerning 42 U.S.C. § 1983 and 28 U.S.C. § 1343, its jurisdictional partner, are instructive in this regard. Section 1983 renders liable every "person" who, under color of state law, deprives citizens of civil rights in violation of the Constitution or federal law, and § 1343 grants federal district courts jurisdiction of civil actions brought to redress such deprivations. This Court has read the grant of subject matter jurisdiction in § 1343 to extend *only* to cases in which the defendant is covered by § 1983.

1. In *City of Kenosha* v. *Bruno*, 412 U.S. 507 (1973), for example, the Court considered whether § 1343 extended to equitable § 1983 claims against *cities*. After reiterating that § 1983's definition of "person" did not cover municipalities, the Court held that § 1343's grant of subject matter jurisdiction precisely tracked the scope of § 1983: Because "'Congress did not undertake to bring municipal corporations within the ambit of' § 1983," "[t]he District

Court was therefore wrong in concluding that it had jurisdiction of appellees' complaints under § 1343." *Id.* at 513 (citation omitted).

Similarly, in *Aldinger* v. *Howard*, 427 U.S. 1 (1976), the Court addressed whether § 1343 conferred subject matter jurisdiction over a § 1983 claim against a *county*—which, like a city, was not then a "person" subject to suit under § 1983. The Court held that it does not, confirming that "the reach of the statute conferring jurisdiction *should be construed in light of the scope of the cause of action as to which federal judicial power has been extended by Congress.*" *Id.* at 17 (emphasis added). The Court further emphasized that jurisdictional provisions should be read in light of "deductions which may be drawn from congressional statutes as to whether Congress wanted to grant this sort of jurisdiction to federal courts." *Id.* at 16-17. In sum, "Congress excluded [counties] from liability in § 1983, and therefore by reference in the grant of jurisdiction under § 1343(3)." *Id.* at 17.

The parallels between these § 1983 cases and the present case are striking. There, as here, the threshold issue was the meaning of terms (there "persons," here "employers") that delimited the class of defendants who were properly subject to federal civil rights legislation. There, as here, the question was not whether the defendant's *conduct* violated the terms of the statute, but whether the defendant was a *type of entity* that Congress determined to regulate. There, as here, the statutory provision delimiting the courts' subject matter jurisdiction (§ 1343(3)) was separate from the substantive provision confining liability to certain parties (§ 1983). There, as here, the jurisdictional provision contained no explicit reference to the class of entities covered by the statute. And there, as here, small state and local agencies would have borne litigation burdens beyond those that Congress intended if the Court had formalistically held that the "person" limitation of the Civil Rights Act was

found only in § 1983—and thus could not be read to limit subject matter jurisdiction under § 1343.

Just as the Court in *City of Kenosha* and *Aldinger* read § 1343 in light of § 1983, so should the Court read § 706(f)(3) of the Civil Rights Act in light of § 701(b) of that Act. As the Court explained in *Aldinger*, "[t]he question . . . is whether by virtue of the statutory grant of subject-matter jurisdiction, . . . Congress has addressed itself to the *party* as to whom jurisdiction . . . is sought." 427 U.S. at 16 (emphasis added). If a defendant is not an "employer" within the meaning of § 701(b), neither is a suit against the defendant within the courts' jurisdiction under § 706(f)(3). The fact that "the 15-employee requirement is found in Title VII's definition of 'employer,'" "but not in Title VII's *jurisdictional* provision" (U.S. Br. 6), is immaterial under these decisions.

2. Although the Solicitor General contends otherwise (U.S. Br. 21), this Court's decision in *Mt. Healthy City Board of Education* v. *Doyle*, 429 U.S. 274 (1977), does not lead to a different result. The plaintiff there asserted jurisdiction under § 1343 as well as § 1331, and the Court did not need to analyze subject matter jurisdiction under § 1343 because it found jurisdiction under § 1331. See 429 U.S. at 278-279. Indeed, citing *City of Kenosha*, the Court expressly observed that "if this were a § 1983 action, brought under the special jurisdictional provision of 28 U.S.C. § 1343 which requires no amount in controversy, it would be appropriate to inquire, for jurisdictional purposes, whether a statutory action had in fact been alleged." *Ibid.* Thus, *Mt. Healthy* is of a piece with *Aldinger* and *City of Kenosha*—a fact confirmed by this Court's statement just last Term that "Congress, in enacting § 1343, had declined (albeit implicitly) to extend federal jurisdiction over any party who could not be sued

under the federal civil rights statutes." See *ExxonMobil* v. *Allapatah*, 125 S. Ct. 2611, 2619 (2005).[3]

Petitioner and the United States suggest that if Title VII's 15-employee requirement goes to the courts' subject matter jurisdiction, the effect will be a slippery slope: "every other required element of the plaintiff's case would presumably be jurisdictional as well." U.S. Br. 13; Pet. Br. 19. But as these § 1983 cases recognize, the threshold question of whether a statute applies to a certain *class of defendants* is not like other garden-variety Title VII issues involving liability. Where Congress excludes a class of entities from regulation, that determination ordinarily ought to protect those entities not only from liability for their conduct, but also from the "potentially crushing expense" of extended discovery on the whole range of fact-intensive issues that a Title VII suit raises. See *Papa* v. *Katy Indus., Inc.*, 166 F.3d 937, 940 (7th Cir. 1999) (Posner, J.) As Congress recognized, this is particularly true for small entities—including a host of state and municipal agencies—whose very survival or ability to provide public services may depend on their ability to avoid the extraordinary costs of mounting a defense to fact-intensive claims of discrimination.

As a practical matter, moreover, the question of whether a party is within the class of entities covered by a statute can be resolved relatively easily on a motion to dismiss or with limited discovery. This is especially so with Title VII's numerosity requirement. Whether an employer has an "employee" for Title VII purposes is determined by the "payroll method," which simply inquires how many persons appear on the payroll during the relevant time period. See *Walters* v. *Metropolitan Educ. Enters., Inc.*, 519

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[3] See also *Finley* v. *United States*, 490 U.S. 545, 573 (1989) (Stevens, J., dissenting) ("Congress' exclusion of municipal corporations from the definition of persons under § 1983 . . . evinced an intent to preclude the exercise of federal-court jurisdiction over them").

U.S. 202, 206 (1997). The Court in *Walters* observed that whether a defendant satisfies the numerosity requirement is "readily demonstrated" by examination of the payroll, and it rejected an alternative reading of Title VII's numerosity requirement in part because it "would turn the coverage determination into an incredibly complex and expensive factual inquiry." *Id.* at 206, 210 (emphasis added). Under current precedent, then, whether a defendant has sufficient employees to fall within Title VII's jurisdiction turns on a straightforward assessment of the payroll: "all one needs to know about a given employee for a given year is whether the employee started or ended employment during that year and, if so, when." 519 U.S. at 211. The United States' suggestion that the 15-employee inquiry is "fact-intensive" (U.S. Br. 16) cannot be squared with this analysis, which it ignores.

The nature of the court's factual inquiry into the number of a defendant's employees is wholly unlike that involved in analyzing "the elusive factual question of intentional discrimination." See *Burdine*, 450 U.S. at 255 n.8. Merits-related Title VII issues—such as whether the plaintiff suffered adverse treatment "because of" her sex—are "both sensitive and difficult," since "[t]here will seldom be 'eyewitness' testimony as to the employer's mental processes." See *Aikens*, 460 U.S. at 716; see also *Singfield* v. *Akron Metro. Hous. Auth.*, 389 F.3d 555, 564 (6th Cir. 2004) (observing that "an employer's true motivations are particularly difficult to ascertain"). Understandably, then, Congress made the courts' subject matter jurisdiction under Title VII turn on the discrete, objective, and "readily demonstrated" threshold question of whether an employer has 15 employees. *Walters*, 519 U.S. at 206.

3. *Zipes* is not to the contrary. Relying substantially on the legislative history, the Court there held that "Congress intended the filing period to operate as a statute of limitations instead of a jurisdictional requirement." 455 U.S.

at 394. That is not surprising. In contrast to statutory questions concerning the class of entities covered by Title VII—which determines the availability of "complete immunity" for small employers (*Hishon*, 467 U.S. at 78)—a limitation period's applicability is "an area over which the federal courts historically have asserted equitable discretion to craft rules of tolling, laches, and waiver." *American Trucking Ass'ns, Inc.* v. *Smith*, 496 U.S. 167, 221 (1990) (Stevens, J., dissenting).

More importantly, the Court's overall analytical approach in *Zipes* in fact supports affirmance here. *Zipes* turned on an analysis of "[t]he structure of Title VII, the congressional policy underlying it, and the reasoning of [this Court's] cases." 455 U.S. at 393. Each of those factors supports a jurisdictional reading of the 15-employee requirement. *First*, under the structure of Title VII, the requirement is located in an independent clause (the preamble), separate from the paragraph that establishes the terms of liability. *Second*, the "congressional policy" behind the requirement is to spare small employers the exorbitant expense of defending fact-intensive discrimination claims—and that policy would be undermined by a nonjurisdictional reading of § 701(b). See Part II, *infra*. *Third*, this Court's § 1983 decisions confirm that where Congress excludes a class of entities from the federal civil rights laws, such exclusions should ordinarily be viewed as jurisdictional.[4]

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[4] The Solicitor General acknowledges that subject matter jurisdiction "can and does ... turn in appropriate cases on whether the United States is a party; whether the defendant is a foreign state or member of a foreign mission; or whether the parties are citizens of different States." U.S. Br. 22 (citations omitted). Thus, he rightly points out that many instances in which the identity of the defendant is relevant to the courts' subject matter jurisdiction involve *governmental* defendants. But that does not mean that cases against the government are the *only* cases in which this is true. Contrary to the Solicitor General's assertion, no

B. The Canon that Statutes Should Be Interpreted to Avoid Constitutional Difficulties Resolves Any Doubt in Favor of a Jurisdictional Reading of Title VII's 15-Employee Requirement.

As demonstrated above, Title VII's 15-employee requirement is most naturally read, both textually and in light of Congress's purpose to exclude small employers from Title VII coverage, as a limitation on the subject matter jurisdiction of the courts. But if there were any doubt on this score, settled rules of statutory construction would resolve that doubt in favor of a jurisdictional reading of § 701(b).

One such rule is that "[i]t is to be presumed that a cause lies outside [the federal courts'] limited jurisdiction," and "the burden of establishing the contrary rests on the party asserting jurisdiction." *Kokkonen* v. *Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994). This canon is closely related to the more general rule that "where an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress." *Edward J. DeBartolo Corp.* v. *Florida Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988). "This cardinal principle . . . has for so long been applied by this Court that it is beyond debate." *Ibid.* The Court does not assume that Congress casually "push[es] the limit of congressional authority." *Solid Waste Agency of No. Cook County* v. *United States Army Corps of Eng'rs*, 531 U.S. 159, 173 (2001) (*SWANCC*). Thus, "[w]here an . . . interpretation

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one is suggesting that "questions regarding the 'applicability' of statutes or the classes of people who may be sued under them are *necessarily* jurisdictional." *Ibid.* But neither is it true that the identity of the defendant, even if a private entity, is *necessarily* a merits question.

of a statute invokes the outer limits of Congress' power" or raises "significant constitutional questions," the Court "expect[s] a clear indication that Congress intended that result." *Id.* at 172, 174.

These principles apply forcefully here. Congress relied on its interstate commerce power as the constitutional basis for enacting Title VII (see 42 U.S.C. § 2000e(b); U.S. Const. art. I, § 8, cl. 3; Pet. Br. 14 n.18), and it adopted Title VII's employee numerosity requirement as a means of respecting the limits of that power. The questionable constitutionality of a broader reading of Title VII confirms that this Court should read the 15-employee requirement as a jurisdictional limitation rather than simply an element of the plaintiff's cause of action.

1. It is well settled that Congress may not regulate intrastate activities under the commerce power unless such activities "'substantially affect interstate commerce.'" *United States* v. *Morrison*, 529 U.S. 598, 609 (2000) (quoting *United States* v. *Lopez*, 514 U.S. 549, 558-559 (1995)). During the legislative debates concerning Title VII, numerous members of Congress expressed the view that the statute regulated activities lacking such an effect and that the minimum-employee requirement was a vital proxy for the required nexus with commerce. [5] As Representatives Poff and Cramer expressed the point: "'[t]he bill proceeds on a theory ... that the quantum of employees is a rational yardstick by which the interstate commerce concept can be measured.'" H.R. Rep. No. 914, 88th Cong., 1st Sess. (1963) (statement of minority views of Reps. Poff & Cramer). In short, "the floor debates concerning Title VII suggest that the minimum employee threshold was ... deemed

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[5] See, *e.g.*, U.S. Equal Employment Opportunity Commission, Legislative History of Titles VII and XI of the Civil Rights Act of 1964 at 2043, 2050-51, 2061, 2066, 3076, 3078-79, 3079-84, 3084-90 (1968).

necessary to justify federal legislation in the employment context under the Commerce Clause." *Tomka* v. *Seiler Corp.*, 66 F.3d 1295, 1322 (2d Cir. 1995) (Parker, J., dissenting) (collecting authorities).

The United States denies that the 15-employee threshold requirement has any constitutional underpinnings whatsoever. U.S. Br. 24. Under its view, the requirement that an employer be "in an industry affecting commerce" (§ 2000e(b)) properly invokes Commerce Clause authority *without regard to* the 15-employee threshold. *Ibid.* But that view of the commerce power goes well beyond *Lopez*. The Court there took pains to reaffirm that the regulated activity's effect on interstate commerce must be "substantial" (*Lopez*, 514 U.S. at 558); it did not authorize regulation of an activity lacking such a connection on the basis that it was within an industry that does. Accord *Morrison*, 529 U.S. at 610. As the Court explained in *SWANCC*, Commerce Clause analysis turns on whether "the *precise object or activity*" at issue "in the aggregate[] substantially affects interstate commerce." See 531 U.S. at 173 (emphasis added).

The Solicitor General's view would authorize Title VII regulation of a neighborhood lemonade stand with just two employees that does not itself have any discernible effect on interstate commerce, solely on the basis that it happens to be within an industry (concessions) that does. Likewise, it would permit Title VII regulation of a three-employee leaf-raking business that does not affect commerce on the basis that it is part of a broader industry (say, landscaping) that does. Congress, however, rightly believed that it needed a tighter nexus to interstate commerce, and it found that nexus in the minimum-employee requirement. See *SWANCC*, 531 U.S. at 173 (declining to read § 404(a) of the Clean Water Act to reach isolated, intrastate ponds); *Jones* v. *United States*, 529 U.S. 848, 851 (2000) (declining to read 18 U.S.C. § 844(i), the federal arson statute, to reach the arson

of private residences, because "constitutionally doubtful constructions should be avoided where possible").

The Solicitor General also denies that Congress viewed Title VII's minimum-employee requirement as relevant to its Commerce Clause authority. He acknowledges the legislative statement of Representatives Poff and Cramer quoted above, but asserts that "[t]aken as a whole, the legislative history does not support that statement." U.S. Br. 24 n.4. As a review of the citations collected above (see n.5) demonstrates, however, there were extensive Commerce Clause objections to Title VII. And in response to these objections, supporters sought to draw a connection between employee numerosity and Congress's commerce power. See, *e.g.*, 110 Cong. Rec. 6548 (Mar. 30, 1964) (Sen. Humphrey); *id.* at 6566 (Mar. 30, 1964) (Sen. Kuchel); *id.* at 7088 (Apr. 7, 1964) (Sen. Stennis); *id.* at 13088 (June 9, 1964) (Sen. Humphrey). As Senator Humphrey explained: it is only "[w]hen [small businesses] get above 25, [that] they get into *some reasonable degree of gross product* in terms of income or output or salaries or goods or services." *Ibid.* (emphasis added). Mindful of the limits of its commerce power, Congress sought to avoid regulating employers whose activities had little effect on the gross product.[6]

In any event, whether or not Title VII would ultimately *violate* the Commerce Clause if it reached smaller employers, Congress's concern about the issue demonstrates that the application of Title VII to smaller employers at least raises a "significant constitutional question[]." *SWANCC*, 531 U.S. at 174. Moreover, the legislative record provides no "clear

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[6] Indeed, to the extent that the Commerce Clause concerns reflected in the legislative history of Title VII involved the earlier, 25-employee minimum (Congress reduced the requirement from 25 to 15 employees in the Equal Opportunity Act of 1972, Pub. L. 92-261, § 2, 86 Stat. 103), those concerns are heightened under the current 15-employee requirement.

indication" that Congress intended to push the outer limits of its commerce power. See *ibid.* Quite the contrary.

2. Citing the dissenting opinion in *Hartford Fire Ins. Co.* v. *California*, 509 U.S. 764, 813 (1993), the Solicitor General notes that legislative and subject matter jurisdiction are distinct concepts and suggests that Title VII's legislative history "speak[s] only to Congress's legislative jurisdiction." U.S. Br. 24, 28. But he offers no reason why Congress would grant the courts jurisdiction over matters that it lacks the power to regulate. And as the majority in *Hartford Fire* recognized, there are times when the constitutionally required nexus with interstate commerce "simultaneous[ly]" implicates both legislative *and* subject matter jurisdiction. See 509 U.S. at 795-797 & n.22; see also *United Phosphorus, Ltd.* v. *Angus Chem. Co.*, 322 F.3d 942, 947-948 (7th Cir. 2003) (en banc). This is just such a case.

This Court's decision in *EEOC* v. *Arabian American Oil Co.*, 499 U.S. 244 (1991), seriously undercuts the Solicitor General's position. The Court there dismissed a Title VII claim brought by a United States citizen employed abroad by an American employer. The Solicitor General acknowledges that the Court there "describes as 'jurisdictional' the portion of the definition of 'employer' that requires that the defendant be 'engaged in interstate commerce.'" U.S. Br. 28. But, again citing the dissent in *Hartford Fire*, he says that the Court was "referring to Congress's 'legislative jurisdiction' to regulate interstate commerce," and that "nothing in *Arabian American Oil Co.* even addresses the courts' subject matter jurisdiction." *Ibid.* There are two difficulties with this argument.

First, it ignores the fact that no one in *Arabian American Oil* questioned Congress's legislative authority to regulate the employment practices of overseas United States employers. See 499 U.S. at 248 ("Both parties concede, as they must, that Congress has the authority to enforce its laws beyond the territorial boundaries of the United

States"). *Second*, and more importantly, it ignores the fact that the Court there, after concluding that Title VII was categorically inapplicable to United States employers operating overseas, affirmed the lower courts' dismissal *for lack of subject matter jurisdiction*. See *id.* at 247. Thus, *Arabian American Oil* supports the conclusion that where Title VII does not reach a defined class of defendants, the courts lack subject matter jurisdiction to hear claims against those defendants.

In any event, the substantial constitutional concerns with an expansive reading of § 701(b) point toward a jurisdictional understanding of the 15-employee requirement. See also *Tomka*, 66 F.3d at 1322 (Parker, J., dissenting). As the Court explained in *Aldinger*, "the reach of the statute conferring jurisdiction should be construed in light of the scope of the cause of action as to which federal judicial power has been extended by Congress." 427 U.S. at 17 (emphasis added).

II. Reading Title VII's 15-Employee Requirement as a Threshold Jurisdictional Issue Vindicates Congress's Intention to Shield Small Employers from the Practical Burden and Expense of Title VII Litigation.

Strong practical considerations further support the conclusion that § 701(b) is jurisdictional. In particular, this reading of the statute would vindicate Congress's desire to spare small employers—including many municipal government agencies—the enormous burden and expense of defending themselves against employment discrimination claims.

1. As this Court has observed: "the congressional decision to limit the coverage of [Title VII] to firms with 15 or more employees has its own justification that must be respected—namely, easing entry into the market and preserving the competitive position of smaller firms."

Clackamas Gastroenterology Assocs., P.C. v. *Wells*, 538 U.S. 440, 447 (2003). We urge the Court to read § 703(f)(5) in light of "the congressional policy underlying [Title VII's exclusion of small employers]." *Zipes*, 455 U.S. at 393; see also *Aldinger*, 427 U.S. at 17 ("the reach of the statute conferring jurisdiction should be construed in light of the scope of the cause of action").

In their effort to "preserv[e] the competitive position" of small entities, members of Congress specifically considered "the burdens placed upon a small business forced to comply with federal regulations *and defend itself against a Title VII suit.*" *Tomka*, 66 F.3d at 1314 (emphasis added). The views of New Hampshire Senator Norris Cotton are representative:

> In short, it is all very well to talk about enforcing morality; and large industries encounter no hardship in handling such matters, for they have teams of lawyers organized to deal with them.
>
> But Senators should think twice before they vote in favor of the passage of a bill which would make it possible for an investigator or a Federal administrative officer to reach a conclusion, and thus make it incumbent on the small businessman to carry the case to the courts if he is to get justice.

110 Cong. Rec. S13092 (1964) (statement of Sen. Cotton). As the Solicitor General acknowledges, members of Congress such as Senator Cotton were "concerned that including all small businesses in the scope of Title VII would impose bureaucratic and litigation costs that small companies could not bear." U.S. Br. 24 n.4.

Notwithstanding Congress's desire to protect small-scale employers, it is an inescapable fact of modern employment litigation that municipalities and other small employers often face what Judge Posner has aptly described as "the potentially crushing expense of mastering the

intricacies of the antidiscrimination laws, establishing procedures to assure compliance, and defending against suits when efforts at compliance fail." *Clackamas*, 538 U.S. at 447 (quoting *Papa*, 166 F.3d at 940); accord *Tomka*, 66 F.3d at 1314; *Miller* v. *Maxwell's Int'l Inc.*, 991 F.2d 583, 587 (9th Cir. 1993). If a small local agency lacks the ability to seek early dismissal of Title VII suits on the basis that it has fewer than 15 employees—and thus should not be subject to suit *at all*—it will incur substantial defense costs in:

- conducting an initial investigation of the allegations;
- retrieving, reviewing, and organizing data for electronic and written discovery;
- preparing and producing witnesses for depositions;
- drafting summary judgment motions; and
- if necessary, putting on a defense at trial.

These routine tasks in litigation require time, money, and human resources—all scarce commodities in small municipal offices operating on tight budgets.

The cost of preparing a defense to a lawsuit is substantial in any case, but it is even more likely to be crippling in a Title VII case—the central allegation in which involves "the elusive factual question of intentional discrimination." *Burdine*, 450 U.S. at 256 n.8. As this Court observed in *Aikens*, "[t]he factual inquiry" into "whether the defendant intentionally discriminated against the plaintiff" is "both sensitive and difficult" and typically cannot be answered by direct evidence. 460 U.S. at 711, 716; see *ibid.* (noting that "[t]here will seldom be 'eyewitness' testimony as to the employer's mental processes"). Thus, a Title VII case is almost always based on circumstantial evidence, requiring inferential arguments and substantial discovery.

Moreover, the plaintiff's burden of proving a prima facie case under the framework of *McDonnell Douglas Corp.* v.

Green, 411 U.S. 792 (1973), is minimal. *Burdine*, 450 U.S. at 253 (describing the burden as "not onerous"); *Price Waterhouse* v. *Hopkins*, 490 U.S. 228, 270 (1989) (O'Connor, J., concurring) (describing the prima facie case as "not difficult to prove"). Courts applying the *McDonnell Douglas* burden-shifting analysis routinely leave for the jury questions about the plaintiffs' qualifications for particular positions, the severity and pervasiveness of alleged harassment, and whether employers' proffered nondiscriminatory justifications for the alleged adverse employment action are pretextual. One court has described the *McDonnell Douglas* framework as "hav[ing] the objective of defining the plaintiff's initial prima facie burden as being so minimal that it is virtually impervious to a motion based on evidentiary insufficiency." *Henderson* v. *Jantzen, Inc.*, 719 P.2d 1322, 1324 (Ore. App. 1986).

Whether or not plaintiff's burden is that minimal, every federal court of appeals has held that once the plaintiff establishes a *prima facie* case under Title VII, summary judgment is ordinarily inappropriate. See *Santiago-Ramos* v. *Centennial P.R. Wireless Corp.*, 217 F.3d 46, 54 (1st Cir. 2000); *Rosen* v. *Thornburgh*, 928 F.2d 528, 533 (2d Cir. 1991); *Marzano* v. *Computer Sci. Corp.*, 91 F.3d 497, 509 (3d Cir. 1996); *Holmes* v. *Bevilacqua*, 774 F.2d 636, 638 (4th Cir. 1985); *Hayden* v. *First Nat'l Bank*, 595 F.2d 994, 997 (5th Cir. 1979); *Singfield* v. *Akron Metro. Hous. Auth.*, 389 F.3d 555, 564 (6th Cir. 2004); *Powers* v. *Dole*, 782 F.2d 689, 694 (7th Cir. 1986); *Crawford* v. *Runyon*, 37 F.3d 1338, 1341 (8th Cir. 1994); *Lowe* v. *City of Monrovia*, 775 F.2d 998, 1009 (9th Cir. 1985); *Orr* v. *City of Albuquerque*, 417 F.3d 1144, 1149-52 (10th Cir. 2005); *Mulhall* v. *Advance Sec., Inc.*, 19 F.3d 586, 598 (11th Cir. 1994); *McKenzie* v. *Sawyer*, 684 F.2d 62, 67 (D.C. Cir. 1982). Thus, once a case reaches the summary judgment stage, it is difficult for an employer of any size to avoid a trial. As a consequence, any municipal government accused of

employment discrimination faces the near-certainty of protracted and burdensome litigation.

2. The burdens of litigation are uniquely harmful to municipal governments and, ultimately, their constituents. Municipal governments are obligated to provide critical public services, and they must meet these obligations with limited financial resources and intense public scrutiny. Every dollar spent on litigation is a dollar taken away from public services. Every hour spent collecting and preparing information for electronic or written discovery is an hour in which the municipal government is shorthanded in responding to citizens' needs. In short, protracted litigation often translates into disruptions in public services. The impact of litigation costs on municipalities is especially significant given the "fiscal recession" that American cities continue to face. See generally Michael A. Pagano & Christopher Hoene, *City Fiscal Conditions in 2004*, 20 (National League of Cities 2004).

The costs of litigation also create tremendous pressure for municipal governments to settle employment discrimination lawsuits—even those lacking merit. Reasonable government officials who must consider the impact of additional litigation costs on the provision of public services will often opt for settlement simply to avoid the costs of litigation, even when they are confident that Title VII does not apply to their offices and even when they believe that their conduct did not violate the statute. See *Buckhannon Bd. & Care Home, Inc.* v. *West Va. Dep't of Health & Human Res.*, 532 U.S. 598, 617 (2001) (Scalia, J., concurring) (noting that defendants might "'abandon[] the fray' because the cost of litigation – either financial or in terms of public relations – would be too great").

The costs of discovery alone may be sufficient to justify, as a financial matter, settlement of a meritless claim. As Justice Breyer has observed: "discovery and discovery-related judicial proceedings take time, they are expensive,

and cost and delay, or threats of cost and delay, can themselves force parties to settle underlying disputes." See *Intel Corp.* v. *Advanced Micro Devices*, 124 S. Ct. 2466, 1485 (2004) (Breyer, J., dissenting). At the end of the day, even a defense verdict may not be worth the candle, since a verdict in a Title VII case does not come with a refund of time or money. Merely defending the lawsuit is a burden that a small municipal government often cannot afford to bear.

3. Treating the numerosity requirement as a jurisdictional element in a Title VII case would frequently ease the burden of litigation for small-scale employers. If the numerosity requirement were deemed jurisdictional, the plaintiff would be required to plead the jurisdictional fact in his complaint, *Kokkonen* v. *Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994); *McNutt* v. *General Motors Acceptance Corp.*, 298 U.S. 178, 182 (1936), subject to Fed. R. Civ. P. 11. Even if the plaintiff alleged that his employer had at least 15 employees "on information and belief," the employer could move for dismissal under Fed. R. Civ. P. 12(b)(1) or the district court could raise the numerosity issue *sua sponte* and order discovery *limited to that issue*. See *United States Catholic Conference* v. *Abortion Rights Mobilization, Inc.*, 487 U.S. 72, 79-80 (1988) (stating that "[i]t is a recognized and appropriate procedure for a court to limit discovery proceedings at the outset to a determination of jurisdictional matters"). Only upon its determination that the employer had at least 15 employees, and thus was covered by Title VII at all, would the court need to consider the plaintiff's substantive allegations.

In most cases, the numerosity question will not require significant discovery or involve serious controversy. Unlike the merits issues in a Title VII case, the number of employees is a matter of readily ascertainable and objective fact, not a subject of inference or significant testimonial dispute. "[T]he ultimate touchstone under § 2000e(b) is whether an employer has employment relationships with 15

or more individuals for each working day in 20 or more weeks during the year in question." *Walters*, 519 U.S. at 212. Under this rule, "all one needs to know about a given employee for a given year is whether the employee started or ended employment during that year and, if so, when." *Id.* at 211. One of the virtues of this rule is that it avoids "turn[ing] the coverage determination into an incredibly complex and expensive factual inquiry." *Id.* at 210.

To be sure, there may be cases at the margins in which the 15-employee requirement necessitates discovery into issues such as whether a worker is an "independent contractor" or an "owner" rather than an employee. But contrary to the parade of horribles in petitioner's brief (at 27-31), these cases are certain to prove exceptional.

And even if the discovery required to sort through the numerosity question *occasionally* results in a significant investment of time or a slight delay in reaching the merits, that is of no great moment. The plaintiff must satisfy the 15-employee requirement regardless of whether it is jurisdictional, and thus the only question is *when* she will be required to make that showing. But for the employer with fewer than 15 employees—who is spared the expense of additional, unrelated discovery in a suit that the plaintiff is not entitled to bring against him—the opportunity to address numerosity at the outset of the case could result in significant savings (or perhaps preservation of the business). In short, given its logical priority in any Title VII case and the relative ease of analysis, no sound policy reason favors treating the numerosity requirement as an element of the Title VII claim rather than an antecedent jurisdictional element.

Congress plainly intended to shield small employers, including small municipal employers, from the burdens of Title VII litigation. Those burdens are significant—especially for municipal agencies operating in small offices with modest financial resources—and they are largely

unavoidable absent an opportunity to have such cases resolved at an early stage. Treating Title VII's 15-employee requirement as a jurisdictional prerequisite vindicates the clear purpose of the statute and frees small-scale municipal governments to do the critical work that they are charged by their citizens to do, unencumbered by the burden of litigation under a statute that grants them "complete immunity." *Hishon*, 467 U.S. at 78.

CONCLUSION

For the foregoing reasons, the judgment of the Fifth Circuit should be affirmed.

Respectfully submitted.

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OCTOBER 2005

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

ARBAUGH *v.* Y & H CORP. DBA THE MOONLIGHT CAFE

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 04–944. Argued January 11, 2006—Decided February 22, 2006

Title VII of the Civil Rights Act of 1964 makes it unlawful for "an employer . . . to discriminate against any [employee] with respect to . . . sex," 42 U. S. C. §2000e–2(a)(1), and defines "employer" as "a person . . . who has fifteen or more employees," §2000e(b). The Act's jurisdictional provision empowers federal courts to adjudicate civil actions "brought under" Title VII. §2000e–5(f)(3). Title VII actions also fit within the Judicial Code's grant of subject-matter jurisdiction to federal courts over actions "arising under" federal law. 28 U. S. C. §1331. At the time Title VII was enacted, §1331 contained a $10,000 amount-in-controversy threshold, which left Title VII claims below that amount uncovered. Section 2000e–5(f)(3) assured that the amount-in-controversy limitation would not impede a Title VII complainant's access to a federal forum. Since 1980, when Congress amended §1331 to eliminate the amount-in-controversy threshold, §2000e–5(f)(3) has served simply to underscore Congress' intention to provide a federal forum for Title VII claims. Because Congress has also authorized federal courts to exercise "supplemental" jurisdiction over state-law claims linked to a federal claim, 28 U. S. C. §1367, Title VII plaintiffs may pursue complete relief in federal court.

The objection that a federal court lacks subject-matter jurisdiction, see Fed. Rule Civ. Proc. 12(b)(1), may be raised at any stage in the litigation, even after trial and the entry of judgment, Rule 12(h)(3). See *Kontrick* v. *Ryan*, 540 U. S. 443, 455. By contrast, the objection that a complaint "fail[s] to state a claim upon which relief can be granted," Rule 12(b)(6), endures only up to, not beyond, trial on the merits, Rule 12(h)(2).

Petitioner Arbaugh sued her former employer, respondent Y&H

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Corporation, in Federal District Court, charging sexual harassment in violation of Title VII and asserting related state-law claims. The case was tried to a jury, which returned a verdict for Arbaugh. After the court entered judgment on that verdict, Y&H moved to dismiss the entire action for want of federal subject-matter jurisdiction, asserting, for the first time, that it had fewer than 15 employees on its payroll and therefore was not amenable to suit under Title VII. Although recognizing the unfairness and waste of judicial resources that granting the motion would entail, the District Court, citing Federal Rule 12(h)(3), considered itself obliged to do so because it believed the 15-or-more-employees requirement to be jurisdictional. It therefore vacated its prior judgment and dismissed Arbaugh's Title VII claim with prejudice and her state-law claims without prejudice. The Fifth Circuit affirmed based on its precedent holding that unless the employee-numerosity requirement is met, federal-court subject-matter jurisdiction does not exist.

Held: Title VII's numerical threshold does not circumscribe federal-court subject-matter jurisdiction. Instead, the employee-numerosity requirement relates to the substantive adequacy of Arbaugh's Title VII claim, and therefore could not be raised defensively late in the lawsuit, *i.e.*, after Y&H had failed to assert the objection prior to the close of trial on the merits. The basic statutory grants of federal-court subject-matter jurisdiction are contained in 28 U. S. C. §1331, which provides for "[f]ederal-question" jurisdiction, and §1332, which provides for "[d]iversity of citizenship" jurisdiction. A plaintiff properly invokes §1331 jurisdiction when she pleads a colorable claim "arising under" the Federal Constitution or laws. See *Bell* v. *Hood*, 327 U. S. 678, 681–685. She invokes §1332 jurisdiction when she presents a claim between parties of diverse citizenship that exceeds the required jurisdictional amount, currently $75,000. See §1332(a). Arbaugh invoked federal-question jurisdiction under §1331, but her case "aris[es]" under a federal law, Title VII, that specifies, as a prerequisite to its application, the existence of a particular fact, *i.e.*, 15 or more employees. The Court resolves the question whether that fact is "jurisdictional" or relates to the "merits" of a Title VII claim mindful of the consequences of typing the 15-employee threshold a determinant of subject-matter jurisdiction, rather than an element of Arbaugh's claim for relief. First, "subject-matter jurisdiction, because it involves the court's power to hear a case, can never be forfeited or waived." *United States* v. *Cotton*, 535 U. S. 625, 630. Moreover, courts, including this Court, have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party. *Ruhrgas AG* v. *Marathon Oil Co.*, 526 U. S. 574, 583. Nothing in Title VII's text indicates that

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Congress intended courts, on their own motion, to assure that the employee-numerosity requirement is met. Second, in some instances, if subject-matter jurisdiction turns on contested facts, the trial judge may be authorized to review the evidence and resolve the dispute on her own. If satisfaction of an essential element of a claim is at issue, however, the jury is the proper trier of contested facts. *Reeves* v. *Sanderson Plumbing Products, Inc.*, 530 U. S. 133, 150–151. Third, when a federal court concludes that it lacks subject-matter jurisdiction, the complaint must be dismissed in its entirety. Thus, the trial court below dismissed, along with the Title VII claim, pendent state-law claims fully tried by a jury and determined on the merits. In contrast, when a court grants a motion to dismiss for failure to state a federal claim, the court generally retains discretion to exercise supplemental jurisdiction, pursuant to §1367, over pendent state-law claims.

While Congress could make the employee-numerosity requirement "jurisdictional" if it so chose, neither §1331 nor Title VII's jurisdictional provision, 42 U. S. C. §2000e–5(f)(3), specifies any threshold ingredient akin to 28 U. S. C. §1332's monetary floor. Instead, the 15-employee threshold appears in a separate provision that "does not speak in jurisdictional terms or refer in any way to the jurisdiction of the district courts." *Zipes* v. *Trans World Airlines, Inc.*, 455 U. S. 385, 394. Given the unfairness and waste of judicial resources entailed in tying the employee-numerosity requirement to subject-matter jurisdiction, the sounder course is to refrain from constricting §1331 or §2000e–5(f)(3), and to leave the ball in Congress' court. If the Legislature clearly states that a threshold limitation on a statute's scope shall count as jurisdictional, then courts and litigants will be duly instructed and will not be left to wrestle with the issue. But when Congress does not rank a statutory limitation on coverage as jurisdictional, courts should treat the restriction as nonjurisdictional in character. Applying that readily administrable bright line here yields the holding that Title VII's 15-employee threshold is an element of a plaintiff's claim for relief, not a jurisdictional issue. Pp. 8–15.

380 F. 3d 219, reversed and remanded.

GINSBURG, J., delivered the opinion of the Court, in which all other Members joined, except ALITO, J., who took no part in the consideration or decision of the case.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 04–944

JENIFER ARBAUGH, PETITIONER *v.* Y & H CORPORATION, DBA THE MOONLIGHT CAFE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[February 22, 2006]

JUSTICE GINSBURG delivered the opinion of the Court.

This case concerns the distinction between two sometimes confused or conflated concepts: federal-court "subject-matter" jurisdiction over a controversy; and the essential ingredients of a federal claim for relief. Title VII of the Civil Rights Act of 1964 makes it unlawful "for an employer . . . to discriminate," *inter alia*, on the basis of sex. 42 U. S. C. §2000e–2(a)(1). The Act's jurisdictional provision empowers federal courts to adjudicate civil actions "brought under" Title VII. §2000e–5(f)(3). Covering a broader field, the Judicial Code gives federal courts subject-matter jurisdiction over all civil actions "arising under" the laws of the United States. 28 U. S. C. §1331. Title VII actions fit that description. In a provision defining 13 terms used in Title VII, 42 U. S. C. §2000e, Congress limited the definition of "employer" to include only those having "fifteen or more employees," §2000e(b). The question here presented is whether the numerical qualification contained in Title VII's definition of "employer" affects federal-court subject-matter jurisdiction or, instead, delineates a substantive ingredient of a Title VII

claim for relief.

The question arises in this context. Jenifer Arbaugh, plaintiff below, petitioner here, brought a Title VII action in federal court against her former employer, defendant-respondent Y&H Corporation (hereinafter Y&H), charging sexual harassment. The case was tried to a jury, which returned a verdict for Arbaugh in the total amount of $40,000. Two weeks after the trial court entered judgment on the jury verdict, Y&H moved to dismiss the entire action for want of federal subject-matter jurisdiction. For the first time in the litigation, Y&H asserted that it had fewer than 15 employees on its payroll and therefore was not amenable to suit under Title VII.

Although recognizing that it was "unfair and a waste of judicial resources" to grant the motion to dismiss, App. to Pet. for Cert. 47, the trial court considered itself obliged to do so because it believed that the 15-or-more-employees requirement was jurisdictional. We reject that categorization and hold that the numerical threshold does not circumscribe federal-court subject-matter jurisdiction. Instead, the employee-numerosity requirement relates to the substantive adequacy of Arbaugh's Title VII claim, and therefore could not be raised defensively late in the lawsuit, *i.e.*, after Y&H had failed to assert the objection prior to the close of trial on the merits.

I

We set out below statutory provisions and rules that bear on this case. Title VII makes it "an unlawful employment practice for an employer . . . to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U. S. C. §2000e–2(a)(1). To spare very small businesses from Title VII liability, Congress pro-

vided that:

> "[t]he term 'employer' means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person . . . ." §2000e(b).[1]

This employee-numerosity requirement[2] appears in a section headed "Definitions," §2000e, which also prescribes the meaning, for Title VII purposes, of 12 other terms used in the Act.[3]

Congress has broadly authorized the federal courts to exercise subject-matter jurisdiction over "all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U. S. C. §1331. Title VII surely is a "la[w] of the United States." *Ibid.* In 1964, however, when Title VII was enacted, §1331's umbrella provision for federal-question jurisdiction contained an amount-in-controversy limitation: Claims could not be brought under §1331 unless the amount in controversy exceeded $10,000. See §1331(a) (1964 ed.). Title VII, framed in that light, assured that the amount-in-controversy limitation would not impede an employment-discrimination complainant's

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[1]The same provision further states that the term "employer" does not include the United States, corporations wholly owned by the United States, Indian Tribes, certain departments and agencies of the District of Columbia, or tax-exempt "bona fide private membership club[s]" (other than labor organizations). §2000e(b).

[2]Congress originally prescribed a 25-or-more-employee threshold. Civil Rights Act of 1964, §701, 78 Stat. 253, but lowered the minimum number of employees to 15 in the Equal Employment Opportunity Act of 1972, §2, 86 Stat. 103.

[3]The other terms defined in §2000e are: "person," "employment agency," "labor organization," "employee," "commerce," "industry affecting commerce," "State," "religion," "because of sex," "complaining party," "demonstrates," and "respondent."

access to a federal forum. The Act thus contains its own jurisdiction-conferring provision, which reads:

> "Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this subchapter." 42 U. S. C. §2000e–5(f)(3).[4]

Congress amended 28 U. S. C. §1331 in 1980 to eliminate the amount-in-controversy threshold. See Federal Question Jurisdictional Amendments Act of 1980, §2, 94 Stat. 2369. Since that time, Title VII's own jurisdictional provision, 42 U. S. C. §2000e–5(f)(3), has served simply to underscore Congress' intention to provide a federal forum for the adjudication of Title VII claims. See Brief for United States as *Amicus Curiae* 13; Tr. of Oral Arg. 4.

We note, too, that, under 28 U. S. C. §1367, federal courts may exercise "supplemental" jurisdiction over state-law claims linked to a claim based on federal law.[5] Plaintiffs suing under Title VII may avail themselves of the opportunity §1367 provides to pursue complete relief in a federal-court lawsuit. Arbaugh did so in the instant case by adding to her federal complaint pendent claims arising under state law that would not independently qualify for

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[4] Title VII contains a separate jurisdictional provision, 42 U. S. C. §2000e–6(b), authorizing suits by the Government to enjoin "pattern or practice" discrimination.

[5] Section 1367(a) states: "Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties."

federal-court adjudication.

The objection that a federal court lacks subject-matter jurisdiction, see Fed. Rule Civ. Proc. 12(b)(1), may be raised by a party, or by a court on its own initiative, at any stage in the litigation, even after trial and the entry of judgment. Rule 12(h)(3) instructs: "Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." See *Kontrick* v. *Ryan*, 540 U. S. 443, 455 (2004). By contrast, the objection that a complaint "fail[s] to state a claim upon which relief can be granted," Rule 12(b)(6), may not be asserted post trial. Under Rule 12(h)(2), that objection endures up to, but not beyond, trial on the merits: "A defense of failure to state a claim upon which relief can be granted . . . may be made in any pleading . . . or by motion for judgment on the pleadings, or at the trial on the merits." Cf. *Kontrick*, 540 U. S., at 459.

II

From May 2000 through February 2001, Jenifer Arbaugh worked as a bartender and waitress at the Moonlight Cafe, a New Orleans restaurant owned and operated by Y&H. Arbaugh alleged that Yalcin Hatipoglu, one of the company's owners, sexually harassed her and precipitated her constructive discharge.[6] In November 2001, Arbaugh filed suit against Y&H in the United States District Court for the Eastern District of Louisiana. Her complaint asserted claims under Title VII and Louisiana law. App. to Pet. for Cert. 1–2.

Arbaugh's pleadings alleged that her federal claim "ar[o]se under Title VII" and that the Federal District

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[6]See *Pennsylvania State Police* v. *Suders*, 542 U. S. 129, 147 (2004) (constructive discharge compensable under Title VII includes an employee's departure due to sexual harassment that renders "working conditions so intolerable that a reasonable person would have felt compelled to resign").

Court had jurisdiction over this claim under §1331 plus supplemental jurisdiction over her state-law claims under §1367. Record in No. 01–3376 (ED La.), Doc. 3, p. 1 (Amended Complaint). Y&H's responsive pleadings admitted Arbaugh's "jurisdictional" allegations but denied her contentions on the merits. *Id.*, Doc. 4, p. 1 (Answer to Complaint). The pretrial order submitted and signed by the parties, and later subscribed by the presiding judge, reiterated that the court was "vested with jurisdiction over [Arbaugh's Title VII claim] pursuant to 28 U. S. C. §1331," and "ha[d] supplemental jurisdiction over [her] state law claims pursuant to 28 U. S. C. §1367." *Id.*, Doc. 19, p. 2. The order listed "Uncontested Material Facts," including: "Plaintiff was employed as a waitress/bartender at the Moonlight for Defendants from May, 2000 through February 10, 2001 when she terminated her employment with the company." *Id.*, p. 3. It did not list among "Contested Issues of Fact" or "Contested Legal Issues" the question whether Y&H had the requisite number of employees under 42 U. S. C. §2000e(b). Record, Doc. 19, pp. 4–5. Nor was the issue raised at any other point pretrial or at trial.

The parties consented to trial before a Magistrate Judge. See 28 U. S. C. §636(c). After a two-day trial, the jury found that Arbaugh had been sexually harassed and constructively discharged in violation of Title VII and Louisiana antidiscrimination law. The verdict awarded Arbaugh $5,000 in backpay, $5,000 in compensatory damages, and $30,000 in punitive damages. The trial court entered judgment for Arbaugh on November 5, 2002.

Two weeks later, Y&H filed a motion under Federal Rule 12(h)(3) to dismiss Arbaugh's complaint for lack of subject-matter jurisdiction. Record, Doc. 44. As sole ground for the motion, Y&H alleged, for the first time in the proceedings, that it "did not employ fifteen or more employees [during the relevant period] and thus is not an employer for Title VII purposes." *Id.*, p. 2 (Memorandum

in Support of Rule 12(h)(3) Motion to Dismiss for Lack of Subject Matter Jurisdiction). The trial court commented that "[i]t is unfair and a waste of judicial resources to permit [Y&H] to admit Arbaugh's allegations of jurisdiction, try the case for two days and then assert a lack of subject matter jurisdiction in response to an adverse jury verdict." App. to Pet. for Cert. 47. Nevertheless, reciting the text of Rule 12(h)(3), see *supra*, at 5, the trial court allowed Y&H to plead that it did not qualify as an "employer" under Title VII's definition of that term. App. to Pet. for Cert. 47–48; see *supra*, at 3.

Discovery ensued. The dispute over the employee count turned on the employment status of Y&H's eight drivers, engaged to make deliveries for the restaurant, and the company's four owners (the Moonlight Cafe's two managers and their shareholder spouses). As the trial court noted, "[i]f either the delivery drivers or the four owners are counted with the persons shown on the payroll journals, then Y&H employed fifteen or more persons for the requisite time." App. to Pet. for Cert. 27. After reviewing the parties' submissions, however, the trial court concluded that neither the delivery drivers nor the owner-managers nor their shareholder spouses qualified as "employees" for Title VII purposes. *Id.*, at 32–43. Based on that determination, the trial court vacated its prior judgment in favor of Arbaugh, dismissed her Title VII claim with prejudice, and her state-law claims without prejudice. *Id.*, at 23.

The Court of Appeals for the Fifth Circuit affirmed. 380 F. 3d 219 (2004). Bound by its prior decisions, the Court of Appeals held that a defendant's "failure to qualify as an 'employer' under Title VII deprives a district court of subject matter jurisdiction." *Id.*, at 224 (citing, *e.g.*, *Dumas* v. *Mt. Vernon*, 612 F. 2d 974, 980 (1980)). Dismissal for want of subject-matter jurisdiction was proper, the Court of Appeals ruled, for the record warranted the con-

clusion that Y&H's delivery drivers, its owner-managers, and their shareholder wives were not "employees" for Title VII purposes, 380 F. 3d, at 225–230, and it was undisputed that Y&H "did not employ the requisite 15 employees without the inclusion of" those persons, *id.*, at 231.

We granted certiorari, 544 U. S. 1031 (2005), to resolve conflicting opinions in Courts of Appeals on the question whether Title VII's employee-numerosity requirement, 42 U. S. C. §2000e(b), is jurisdictional or simply an element of a plaintiff's claim for relief. Compare, *e.g.*, 380 F. 3d, at 223–225 (Title VII's employee-numerosity requirement is jurisdictional), and *Armbruster* v. *Quinn*, 711 F. 2d 1332, 1335 (CA6 1983) (same), with, *e.g.*, *Da Silva* v. *Kinsho International Corp.*, 229 F. 3d 358, 361–366 (CA2 2000) (Title VII's employee-numerosity requirement is not jurisdictional); *Nesbit* v. *Gears Unlimited, Inc.*, 347 F. 3d 72, 76–83 (CA3 2003) (same); *EEOC* v. *St. Francis Xavier Parochial School*, 117 F. 3d 621, 623–624 (CADC 1997) (Americans with Disabilities Act's employee-numerosity requirement, 42 U. S. C. §12111(5)(A), resembling Title VII's requirement, is not jurisdictional).

III

"Jurisdiction," this Court has observed, "is a word of many, too many, meanings." *Steel Co.* v. *Citizens for Better Environment*, 523 U. S. 83, 90 (1998) (internal quotation marks omitted). This Court, no less than other courts, has sometimes been profligate in its use of the term. For example, this Court and others have occasionally described a nonextendable time limit as "mandatory and jurisdictional." See, *e.g.*, *United States* v. *Robinson*, 361 U. S. 220, 229 (1960). But in recent decisions, we have clarified that time prescriptions, however emphatic, "are not properly typed 'jurisdictional.'" *Scarborough* v. *Principi*, 541 U. S. 401, 414 (2004); accord *Eberhart* v. *United States*, 546 U. S. ___, ___ (2005) *(per curiam)* (slip op., at 4–

7); *Kontrick*, 540 U. S., at 454–455. See also *Carlisle* v. *United States*, 517 U. S. 416, 434–435 (1996) (GINSBURG, J., concurring).

The dispute now before us concerns the proper classification of Title VII's statutory limitation of covered employers to those with 15 or more employees. If the limitation conditions subject-matter jurisdiction, as the lower courts held it did, then a conclusion that Y&H had fewer than 15 employees would require erasure of the judgment for Arbaugh entered on the jury verdict. But if the lower courts' subject-matter jurisdiction characterization is incorrect, and the issue, instead, concerns the merits of Arbaugh's case, then Y&H raised the employee-numerosity requirement too late. Its pretrial stipulations, see *supra*, at 6, and its failure to speak to the issue prior to the conclusion of the trial on the merits, see Fed. Rule Civ. Proc. 12(h)(2), *supra*, at 5, would preclude vacation of the $40,000 judgment in Arbaugh's favor.

On the subject-matter jurisdiction/ingredient-of-claim-for-relief dichotomy, this Court and others have been less than meticulous. "Subject matter jurisdiction in federal-question cases is sometimes erroneously conflated with a plaintiff's need and ability to prove the defendant bound by the federal law asserted as the predicate for relief—a merits-related determination." 2 J. Moore et al., Moore's Federal Practice §12.30[1], p. 12–36.1 (3d ed. 2005) (hereinafter Moore). Judicial opinions, the Second Circuit incisively observed, "often obscure the issue by stating that the court is dismissing 'for lack of jurisdiction' when some threshold fact has not been established, without explicitly considering whether the dismissal should be for lack of subject matter jurisdiction or for failure to state a claim." *Da Silva*, 229 F. 3d, at 361. We have described such unrefined dispositions as "drive-by jurisdictional rulings" that should be accorded "no precedential effect" on the question whether the federal court had authority to